THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 15245 of 1999

O r d e r:

M/s. Leela Marine (Ice Factory), a partnership firm, represented by its partner, has filed this present writ petition assailing the letter dated 07.07.1999, whereby the respondent, namely Visakhaptnam Port Trust, had put the petitioner on notice that the power supply would be disconnected on 15.07.1999.

The petitioner states that the Ice Factory was established within the precincts of the respondent in 1994. At the time of establishing the Ice Factory, power supply connection was obtained from A.P.S.E.B. In 1995, the petitioner states that the respondent agreed to provide power supply to the units established within the precincts of the respondent on payment of usual power charges, and required the units to get the power supply connection provided by A.P.S.E.B. disconnected. Accordingly, the respondent provided power supply connection to the petitioner, and the petitioner got the power supply connection provided by A.P.S.E.B. disconnected. While so, the respondent issued the impugned letter, putting the petitioner on notice that the power supply would be disconnected on 15.07.1999.

The learned counsel for the petitioner submitted that the petitioner at the time of establishing the Ice Factory obtained power supply connection from A.P.S.E.B. In 1995, the respondent agreed to provide power supply to the units established within their precincts, and required the units to get the power supply connection provided by A.P.S.E.B. disconnected. Accordingly, upon the respondent providing power supply, the petitioner got the power supply connection provided by A.P.S.E.B. disconnected. He submits that since the respondent had agreed to provide power supply uninterruptedly to the units within their precincts, it is not proper for them to unilaterally disconnect the power supply, and as such, the impugned letter, issued by the respondent to disconnect the power supply on 15.07.1999, is illegal and arbitrary.

The respondent filed detailed counter. The learned Standing Counsel for the respondent reiterating the counter averments contended that as the units established within the precincts of the respondent were facing power supply problems from A.P.S.E.B., they entered into an arrangement with the respondent for supply of power, and the respondent agreed to provide power supply only to the refrigeration sections, so that the fish and other marine products stored do not perish. He submitted that there is no understanding to the effect that the respondent would provide power supply continuously or for a particular period of time to the units. In fact, in the very letter of the respondent wherein it was agreed to provide power

supply, it was made very clear that if the respondent is not in a position to supply power, the units should make their own arrangement, and it is only on such condition, the respondent agreed to supply power for ever. He submitted that in the absence of any contract entered into by the respondent with the units to supply power continuously or for a particular period, the petitioner has no right whatsoever to have continuous power supply from the respondent. At any rate, he submitted that as the respondent itself is facing power supply problems, the respondent has taken a policy decision to stop providing power supply to the units established within its precincts, and the notice of disconnection having been given in pursuance of such policy decision, no interference is called for therewith.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

Though the petitioner states that the respondent agreed to supply the power continuously, and on such agreement, he got the power supply provided by A.P.S.E.B. disconnected, the same is disputed by the respondent, and it is contended that at no point of time, they agreed to provide power supply to the petitioner continuously or for a particular period. It is their case that as the units established within the precincts of the respondent were facing intermittent power offs, in order to save the fish and other marine products from perishing, in which business the petitioner is dealing, at his request and similarly placed persons, they merely agreed to provide power supply to the refrigeration sections of the units, and at any rate, it was made very clear that in the even the respondent is not in a position to provide the power supply, the units should make their own arrangement. Though the petitioner claimed that the respondent agreed to provide power supply continuously, no material whatsoever has been produced to show that the respondent had agreed to provide such uninterrupted power supply. Be that as it may, whether, in fact, the respondent agreed to supply power continuously or for a particular period, being a disputed question, cannot be gone into in a writ petition. At any rate, inasmuch as it is the specific case of the respondent that there is no agreement for supply of power to the units established within the precincts of the respondent, and the petitioner in particular, either continuously or for a particular period of time, and the respondent having taken a policy decision not to provide supply power to the units established within their precincts, no exception can be taken to the impugned notice, issued by the respondent seeking to disconnect the power supply to the petitioner, and more so when it is the specific case of the respondent that they agreed to provide power supply to the units established within their precincts on the condition that in the event of their not being able to supply the power, they should make their own arrangement. In that view of the matter, no Mandamus can be issued to the respondent to provide power supply to the petitioner continuously or uninterruptedly.

Hence, the writ petition is dismissed. This order, however, does not preclude the petitioner, having regard to the nature of business carried on by him, namely export of fish, which requires non-stop power supply, to make appropriate representation to the respondent requesting to provide power supply to them, and if any such representation is made, the respondent shall keeping in view the

availability of power and their power needs, consider the same and pass appropriate orders in accordance with law. No costs.

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N.V. RAMANA, J.

Date: 7th October 2005.

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